



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:314. Contractor certification.

6 RELATES TO: KRS 224.60-110, KRS 224.60-130(1) [(2)]

7 STATUTORY AUTHORITY: KRS 224.60-130(1)(a) [(2)(a)]

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) [(2)(a)]

9 requires the establishment of criteria to be met by persons who contract to perform corrective  
10 action. This administrative regulation establishes criteria for obtaining certification to be eligible  
11 to contract and [to] perform corrective action for a release from a [an underground] petroleum  
12 storage tank. [~~This administrative regulation is necessary to set minimum standards for~~  
13 ~~determining:~~

14 (1) ~~Technical competency and proficiency in the performance of corrective action; and~~

15 (2) ~~General knowledge of:~~

16 (a) ~~Cleanup standards required to obtain closure from the Underground Storage Tank~~

17 ~~Branch;~~

18 (b) ~~Health and safety standards; and~~

19 (c) ~~Cabinet administrative regulations.]~~

1           Section 1. Definitions. (1) "Interim contractor" means an individual who is not a certified  
2 contractor and is identified by a company to replace a certified contractor in accordance with  
3 Section 9 [~~Section 8~~] of this administrative regulation.

4           (2) "Participation [~~in~~]" means direct and substantial involvement in each aspect of  
5 corrective action [~~, including site characterization,~~] and report preparation. [~~preparation of a site~~  
6 ~~investigation report, preparation of a proposed corrective action plan, and implementation of a~~  
7 ~~corrective action plan approved by the cabinet.~~]

8           (3) "Supervise" means having the authority and responsibility for the performance of  
9 corrective action at a facility as a result of a release from a petroleum storage tank system, and  
10 having the ability to exercise independent judgement and to direct the activities of an employee  
11 or subcontractor in the performance of corrective action.

12           Section 2. Applicability. This administrative regulation sets criteria for being certified as  
13 a contractor, including the following:

14           (1) Technical competency and proficiency in the performance of corrective action;

15           (2) General knowledge of 401 KAR Chapter 42; and

16           (3) General knowledge of health and safety standards.

17           Section 3. Certified Contractor Requirements for Reimbursement. (1) For an application  
18 for assistance approved after March 1, 1995, a person who contracts to perform or supervise  
19 corrective action shall be certified by the cabinet to be eligible for reimbursement.

20           ~~[Section 2. Applicability. (1) For an application approved after March 1, 1995, the cost~~  
21 ~~for an action performed by a person who contracts to perform corrective action for a release from~~  
22 ~~a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if~~  
23 ~~it is reasonable and necessary, and if the action is:~~

1       ~~(a) Performed or supervised by an individual who is certified by the cabinet; and~~

2       ~~(b) In compliance with 401 KAR Chapter 42.]~~

3       (2) A certified contractor shall perform or supervise corrective action such as site checks,  
4       site investigations, and preparation and implementation of corrective action at facilities ~~[plans]~~,  
5       in accordance with 401 KAR Chapter 42.

6       (3)(a) To be eligible for reimbursement from the cabinet ~~[fund]~~, a person who contracts  
7       to perform corrective action shall, prior to incurring costs ~~[cost]~~, notify the cabinet and the owner  
8       or operator of the facility, in writing, of the name of the certified contractor designated to  
9       supervise the corrective action.

10       (b) If the certified contractor changes, a new notice shall be given.

11       (4) A person or company who installs, repairs, closes, or removes an underground storage  
12       tank, not involving the performance of corrective action, shall not be subject to this  
13       administrative regulation.

14       Section 4 ~~[Section 3]~~. Application Requirements. (1) An applicant for certified contractor  
15       shall:

16       (a) Submit to the cabinet a completed "Certified ~~[Certified]~~ Contractor Application",  
17       DEP 6072 (January 2006) ~~[form]~~;

18       (b) Submit verification of experience of participation in the performance of corrective  
19       action at facilities where a release occurred from a petroleum storage tank system; and

20       (c) Complete the examination requirement of this administrative regulation.

21       (2) An application to take the certified contractor examination shall be denied if the  
22       applicant:

23       (a) Fails to provide the information required by the application form; or

1 (b) Fails to comply with the experience requirement of this administrative regulation; or

2 (c) Makes a misrepresentation or submits false information in the application.

3 (3)(a) An applicant who has been assigned an examination [~~a testing~~] date and time may  
4 request a change in the examination [~~testing~~] schedule by writing to the cabinet.

5 (b) If the request for a rescheduled examination [~~testing~~] date falls into another  
6 examination [~~testing~~] quarter, the applicant shall reapply to the cabinet.

7 (4) An applicant who wishes to re-take [~~resit~~] the certified contractor examination shall  
8 reapply to the cabinet.

9 Section 5 [~~Section 4~~]. Experience Requirements. (1) The experience required for  
10 contractor certification is as follows:

11 (a) A person with a degree in the physical, life or environmental sciences with two (2)  
12 years participation, as defined in Section 1(2) of this administrative regulation, in the  
13 performance of corrective action.

14 (b) A person without a degree in the physical, life or environmental sciences with six (6)  
15 years participation, as defined in Section 1(2) of this administrative regulation, in the  
16 performance of corrective action. [~~An applicant shall demonstrate participation in the~~  
17 ~~performance of corrective action, as defined in Section 1(2) of this administrative regulation, at a~~  
18 ~~minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to~~  
19 ~~making application.~~

20 (2) ~~Technical training approved by the cabinet shall reduce the experience requirement of~~  
21 ~~participation in the performance of corrective action to a minimum of four (4) facilities.~~

1       ~~(3) Registration in Kentucky as a professional engineer shall reduce the experience~~  
2 ~~requirements of participation in the performance of corrective action to a minimum of two (2)~~  
3 ~~facilities.~~

4       ~~(4) Registration in Kentucky as a certified professional geologist shall reduce the~~  
5 ~~experience requirements of participation in the performance of corrective action to a minimum of~~  
6 ~~two (2) facilities.]~~

7       Section 6 [~~Section 5~~]. Examination Requirements. Prior to the cabinet's approval of  
8 certification, an [A~~n~~] applicant for certified contractor shall pass a written examination  
9 administered by the cabinet.

10       (1) The examination for certification shall be a written multiple choice examination  
11 covering all aspects of:

12       (a) Corrective action for a release from a petroleum storage tank system. The examination  
13 shall test the applicant's knowledge of codes, standards, statutes [~~laws~~], regulations, current  
14 technology, and industry recommended practices with respect to performing corrective action  
15 where a release has occurred from a petroleum storage tank system; and

16       (b) Applicable occupational health and safety and public health and safety requirements.  
17 The examination shall test the applicant's knowledge of codes, standards, statutes [~~laws~~],  
18 regulations, current technology, and industry recommended practices with respect to  
19 occupational health and safety and public health and safety; and

20       (c) The reporting requirements, documentation requirements and procedures of 401 KAR  
21 Chapter 42. [~~the cabinet. The examination shall test the applicant's knowledge of codes, laws and~~  
22 ~~regulations.~~]

1 (2) A minimum score of seventy-five (75) percent on the examination shall be considered  
2 passing.

3 (3) The examination shall be given upon prior appointment with the cabinet.  
4 [semiannually.]

5 (4) The cabinet shall have a minimum of fourteen (14) calendar days to review the  
6 application and schedule the examination. ~~[An application shall be filed with the cabinet at least~~  
7 ~~ten (10) working days in advance of the testing date to take the examination.]~~

8 (5) The cabinet shall furnish the applicant with instructions for taking the examination  
9 upon receipt of a completed application. The instructions shall refer the applicant to relevant  
10 statutes, regulations and industry publications.

11 (6) ~~[(5)(a)]~~ Each examination shall be graded and the applicant notified of the result upon  
12 completion of the examination. ~~[within fifteen (15) working days.]~~

13 ~~(b) Examination papers shall not be returned to or reviewed by the applicant.~~

14 ~~(c) An applicant may review his test response sheet by appointment.~~

15 ~~(6) The cabinet shall furnish the applicant with instructions for taking the examination,~~  
16 ~~upon receipt of a completed application. The instructions shall refer the applicant to relevant~~  
17 ~~laws, regulations and industry publications.]~~

18 (7) Contractors who fail the examination shall be allowed to retake the examination no  
19 sooner than thirty (30) days from the previous examination date.

20 Section 7 [Section 6]. Certification and Renewal Procedures. (1) The cabinet shall issue a  
21 certificate to each individual who successfully complies with this administrative regulation. The  
22 certificate shall be renewed two years from the date of certification. ~~[biannually].~~

(2) An application for renewal shall be submitted to the cabinet on the “Certified Contractor Application”, DEP 6072 (January 2006) [~~Certified Contractor Application for Renewal form.~~]

(3) The certified contractor shall be responsible for renewing the certification prior to expiration. Certified contractors who fail to apply for renewal, prior to expiration, shall have thirty (30) days from the date of expiration to submit the required renewal application. Contractors who fail to submit the renewal application shall retake the examination in order to renew certification.

(4) [(3)] The certificate shall not be renewed if an applicant:

(a) Fails to provide the information required by the “Certified Contractor Application”, DEP 6072 (January 2006) [~~Certified Contractor Application for Renewal form.~~];

(b) Makes a misrepresentation or submits false information in the application [~~for renewal~~]; or

(c) Failed to participate in or supervise [~~supervise a~~] corrective action during the two (2) year period prior to renewal. [~~or~~

d) ~~Fails to maintain a professional registration~~

~~(4) An applicant denied the opportunity to take the certification examination [test] or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 401 KAR 42:320.]~~

(5) [(5)(a)] The cabinet shall require that a certified contractor pass a written examination to renew a certification if there has been a significant change, since the date of original certification, in the statutes, regulations, [law,] code or industry recommended practice with respect to performing corrective action and the reporting and document requirements of [~~to be~~

submitted to] the cabinet. The cabinet shall notify certified contractors in writing when an updated examination has been finalized.

~~[(b) A professional engineer, or certified professional geologist, registered in Kentucky, shall be exempt from the reexamination requirement of paragraph (a) of this subsection.]~~

(6) An applicant denied the opportunity to take the certification examination or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to KRS 224.10-420, KRS 224.10-440 and 401 KAR 100:010.

Section 8 ~~[Section 7]~~. Revocation or Suspension of Certification. (1) The cabinet ~~[secretary]~~ shall revoke or suspend a certificate issued pursuant to this administrative regulation if the certified contractor:

(a) Negligently, incompetently, recklessly or intentionally violates a provision of this administrative regulation or any required federal, state or local regulation, code or standard relating to corrective action;

(b) Recklessly or intentionally causes or permits a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet;

(c) Obtained the certification through fraud or misrepresentation;

(d) Fails to perform a corrective action in a manner consistent with state and federal statutes ~~[law]~~ and regulations for safety or corrective action, or fails to perform a corrective action consistent with generally acceptable professional standards; or

(e) Knowingly or intentionally submits false information, documentation or payment request to an owner, an operator, or the cabinet.



1 (2) The cabinet ~~[secretary]~~ shall send written notice to a contractor whose certificate has  
2 been suspended or revoked.

3 (3) A person whose certificate is suspended or revoked may appeal by requesting a  
4 hearing pursuant to KRS 224.10-420, KRS 224.10-440 and 401 KAR 100:010. ~~[401 KAR~~  
5 ~~42:320.]~~

6 Section 9 ~~[Section 8]~~. Interim Contractor. (1) A company engaged in the performance of  
7 corrective action at a facility shall immediately notify the cabinet in writing of the extended  
8 absence of a certified contractor due to an emergency or unanticipated circumstance. The notice  
9 shall provide the name ~~[following information:]~~

10 ~~[(a)]~~ Name] and qualifications of the individual replacing the certified contractor.  
11 ~~[contractor; and]~~

12 ~~[(b) The length of time for which the company seeks to have the interim contractor fulfill~~  
13 ~~the obligations of the certified contractor.]~~

14 (2) The cabinet shall evaluate the qualifications of the designated interim contractor and  
15 shall notify the company of its determination, in writing, within fifteen (15) days of receipt of the  
16 company's notice. The cabinet shall:

17 (a) Approve ~~[or deny]~~ the company's request for designation of the interim contractor for  
18 a period not to exceed six (6) months and specify conditions appropriate to the facility and the  
19 interim contractor's qualifications; or [and]

20 (b) Deny the request. ~~[Specify conditions appropriate to the facility and the interim~~  
21 ~~contractor's qualifications.]~~

22 (3) No individual company shall engage an interim contractor for more than six (6)  
23 months within a twelve (12) month period.

1        Section 10 [~~Section—9~~]. Incorporation by Reference. (1) “Certified Contractor  
2 Application”, DEP 6072 (January 2006) is incorporated by reference. [~~The following forms are~~  
3 ~~incorporated by reference:~~

4        (a) ~~“Certified Contractor Application Form (June 1996)”~~; and

5        (b) ~~“Certified Contractor Application for Renewal Form (June 1996)”~~.]

6        (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
7 law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort,  
8 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may  
9 also be obtained on the Division of Waste Management’s web page located at  
10 www.waste.ky.gov.

401 KAR 42:314 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary  
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Bruce Scott, P. E., Director  
Division of Waste Management  
14 Reilly Road  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Bruce.Scott@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:314

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes criteria to obtain certification to contract and perform corrective action for a release from a petroleum storage tank.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank. This is required to receive reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment will to simplify the examination requirements and update the incorporated materials.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to simplify the examination requirements and update the incorporated materials.
- (c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by establishing the certification criteria for persons to contract and perform corrective action for a release from a petroleum storage tank.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

This amendment updates the incorporated materials for UST systems. The cabinet expects no significant impact from this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owner and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:314

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes   X   No        If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-120(a) authorize the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL  
INCORPORATED BY REFERENCE IN  
401 KAR 42:314**

I. This administrative regulation incorporates by reference the “Certified Contractor Application”, DEP 6072 (January 2006). This document is submitted by contractors performing corrective action to become certified by the Petroleum Storage Tank Environmental Assurance Fund.

This document consists of 2 pages.